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8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,
11
12 Plaintiff,
13
14 v.
15 DANIEL VINCENT SALAZAR,
Defendant.

CASE NO. 1:20-CR-00025-NONE-SKO

STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
FINDINGS AND ORDER

PROPOSED DATE: March 3, 2021
TIME: 1:00 p.m.
COURT: Hon. Sheila K. Oberto

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17 This case is scheduled for a status conference on January 20, 2021, but the parties have agreed to
18 move this hearing to March 3, 2021. This Court has issued General Orders 611-628 to address public
19 health concerns related to COVID-19, including the temporary suspension of jury trials and restrictions
20 on access to court buildings. Initially the Fresno courthouse was closed through June 15, 2020, but it
21 has since been closed until further notice.

22 Although the General Orders address district-wide health concerns, the Supreme Court has
23 emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive open-
24 endedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case. *Zedner*
25 *v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-record findings, there can be no
26 exclusion under" § 3161(h)(7)(A). *Id.* at 507. And moreover, any such failure cannot be harmless. *Id.*
27 at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
28 judge ordering and ends-of-justice continuance must set forth explicit findings on the record "either
orally or in writing").

Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory and inexcusable—the General Order requires specific supplementation. Ends-of-justice continuances are excludable only if “the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.” *Id.*

The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7). Although the Speedy Trial Act does not directly address continuances stemming from pandemics, natural disasters, or other emergencies, this Court has discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

In light of the societal context created by the foregoing, this Court should consider the following case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7). When continued, this Court should designate a new date for the hearing. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be “specifically limited in time”).

STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendant, by and through defendant’s counsel of record, accordingly stipulate as follows:

1. By previous order this matter was set for a status conference hearing on January 20, 2021. The Court more recently has invited a continuance of this hearing if counsel do not believe that anything substantial can be accomplished at the currently scheduled hearing.

1 2. By this stipulation, the parties agree that the next status conference be scheduled for
2 March 3, 2021, and to exclude time between January 20, 2021, and March 3, 2021, under 18 U.S.C. §§
3 3161(h)(7)(A) and 3161(h)(7)(B)(i), (ii) and (iv).

4 3. The parties agree, and request that the Court find the following:

5 a) Counsel for defendant desires additional time to consult with his client, to review
6 the current charges and conduct additional investigation and research related to the charges, to
7 discuss potential resolutions with his client, and to evaluate and potentially prepare pretrial
8 motions. In part this is because the government has continued its investigation of the crimes, the
9 government provided supplemental discovery, is gathering additional requested items, and
10 counsel and the defendant will benefit from additional time to consider this new material. The
11 parties have had preliminary discussion on possible resolutions of the case without a trial, and
12 that communication is ongoing.

13 b) Counsel for defendant believes that failure to grant the above-requested
14 continuance would deny him the reasonable time necessary for effective preparation, taking into
15 account the exercise of due diligence.

16 c) The government does not object to the continuance and joins in the request.

17 d) In addition to the public health concerns cited by General Orders 611 and 612 and
18 presented by the evolving COVID-19 pandemic, an ends-of-justice delay is particularly apt in
19 this case because counsel or other relevant individuals have been encouraged to telework and
20 minimize personal contact to the greatest extent possible. It will be difficult to avoid personal
21 contact should the hearing proceed.

22 e) Based on the above-stated findings, the ends of justice served by continuing the
23 case as requested outweigh the interest of the public and the defendant in a trial within the
24 original date prescribed by the Speedy Trial Act.

25 f) Based on the above-stated findings, the ends of justice served by continuing the
26 case as requested outweigh the interest of the public and the defendant in a trial within the
27 original date prescribed by the Speedy Trial Act.

28 g) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,

et seq., within which trial must commence, the time period from January 20, 2021, to March 3, 2021, inclusive, is deemed excludable under 18 U.S.C. §§ 3161(h)(7)(A) and 3161(h)(7)(B)(i), (ii) and (iv) because it results from a continuance granted by the Court at the request of the parties on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

4. Nothing in this stipulation and order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial must commence.

IT IS SO STIPULATED.

Dated: January 13, 2021

McGREGOR W. SCOTT
United States Attorney

/s/ David Gappa
David Gappa
Assistant United States Attorney

Dated: January 13, 2021

/s/ Eric Kersten
Eric Kersten
Counsel for Defendant
DANIEL VINCENT SALAZAR

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UNITED STATES OF AMERICA,

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FINDINGS AND ORDER

The Court has reviewed and considered the stipulation filed by the parties on January 13, 2021, and also reviewed the record of this case. For the reasons stated in the stipulation, the status conference shall be continued to March 3, 2021, and the period of time from the last court appearance through March 3, 2021, inclusive, is deemed excludable under 18 U.S.C. §§ 3161(h)(7)(A) and 3161(h)(7)(B)(i), (ii) and (iv) because it results from a continuance granted by the Court at the request of the parties on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

IT IS SO ORDERED.

Dated: January 13, 2021

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE